IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Criminal Appeal No. 313 of 2000

Reserved on : 27th November, 2007

Date of Decision: 27th December,2007

Sohan Lal	Appellant
Versus	
State of Himachal Pradesh	Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellant: Mr.Rakesh Jaswal, Advocate.

For the respondent: Mr.Varinder Verma, Addl. Advocate General.

Sanjay Karol, J.

The present appeal arises out of judgment dated 20th May, 2000 passed by Sessions Judge, Bilaspur, H.P. in sessions trial No. 28 of 1996 titled as State of H.P. vs. Sohan Lal and others, acquitting three accused persons of the charged offence and convicting the fourth, accused No.1 Sohan Lal for an offence under Section 498-A and 306, IPC and sentencing him to undergo imprisonment for a period of one year with fine of Rs.500/- and in default thereof to further undergo imprisonment for a period of 3 months for an offence under Section 498-A, IPC and for a period of five years with fine of Rs.1000/- and in default thereof to

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

further undergo imprisonment for a period of six months for an offence under Section 306, IPC.

As per the case of the prosecution, deceased Smt. Krishani Devi was married to accused Sohan Lal and four children were born out of the wedlock. Accused persons Smt. Manbhari Devi, mother-in-law (accused No.2), Vidya Sagar and Kashmiri Lal, brothers-in-law (accused Nos. 3 & 4, respectively) and Sohan Lal, husband (accused No.1) maltreated the deceased Smt. Krishani Devi and did not provide clothes and meals and physically beat her. Some time before her death deceased visited her paternal home and told her mother about the harassment being meted out by the accused persons. Smt. Krishani Devi informed her mother about the beatings given to her by the accused persons but she was helpless. Sh. Bhagat Ram, brother-in-law of the deceased had also asked the accused persons not to maltreat her, but, despite this the accused continued maltreating her. On 13.4.1995 Jai Singh, brother of the deceased visited the deceased when he found her weeping and was told that all the accused persons had given her beatings. On 14.4.1995 Bhagat Ram (PW-1) and Smt. Servo Devi (PW-4) were informed that deceased had stomachache. Shri Bhagat Ram upon reaching the house of deceased found her dead. On 14.4.1995, Smt. Krishani Devi committed suicide. As such, the accused persons had caused cruelty to Smt. Krishanai Devi and they had abetted the commission of suicide. Thus, the accused persons committed the offence punishable under Section 498-A and 306, IPC.

Statement of PW-1 (Ext.PW-1/A) was recorded by the police and based upon the same FIR No. 25/95 dated 14.4.1995 (Ext.PW-

10/A) was recorded with Police Station Bharari, District Bilaspur, under Sections 498-A, 306 read with Section 34, IPC. Two plastic tubes (Ext.P3 and Ext.P4) containing 16 tablets of Sulphas (Phosphorus), which was poison was taken into possession by the police vide seizure memo (Ext.PW-3/C) from the house of the accused in the presence of Bansi Ram (PW-3). Inquest reports (Ext.PW-10/B) and Ext.PW-10/C) were prepared and post-mortem (Ext.P-6) was carried out on the dead body of the deceased by Dr.D.P.Handa and Dr.D.R.Rawat. The report of Chemical Examiner (Ext.P-7) was obtained by sending viscera for chemical examination. The medical evidence indicated that accused had died due to aluminum phosphide poisoning.

With the completion of investigation, challan was presented in the Court for trial. All of the accused persons were charged for an offence under Section 498-A, 306 read with Section 34, IPC to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined 10 witnesses and the statement of accused under Section 313, Cr.P.C. was also recorded. The accused took the defence that Shri Bhagat Ram (PW-1) had not returned the ornaments belonging to the deceased, therefore, she committed suicide which fact had been disclosed by her to her brother Jai Singh. Accused also examined four witnesses in their defence.

The Court below found accused No.1 Sohan Lal, husband of the deceased guilty of commission of an offence under Sections 498-A and 306 IPC but, however, with regard to other accused persons no evidence was found and they were acquitted of the charged offence.

I have heard learned counsel and perused the record.

The learned counsel for the appellant has submitted that in view of acquittal of the co-accused the case of the prosecution itself stands falsified and the appellant also ought to have been acquitted of the charged offence; equal weightage was required to be given to the version of the defence witnesses and from the statement of DW-2 Smt. Kiran Devi, daughter of deceased, it is amply clear that the case made out by the prosecution is false.

Learned counsel for the respondent has supported the judgment for the reasons set out therein.

Ext.P-6 is the post-mortem report dated 15.4.1995 and Ext.P-7 is the report of Chemical Examiner. From these documents, it is evident that the deceased, aged 36 years, died of "respiratory failure due to aluminum phosphide poisoning".

Out of 10 prosecution witnesses Bhagat Ram (PW-1) is the brother-in-law of the deceased, Smt. Sarbo Devi (PW-4) is the mother of the deceased and Shri Jai Kishan (PW-5) is the brother of the deceased and Bhagwan Dass (PW-2) is the resident of the village of PW-4. Both Shri Bansi Ram (PW-3) and Smt. Ajudhaya Devi (PW-6) are the residents of the village of accused and PW-6 is an immediate neighbour of accused No.1. The other witnesses ASI Prem Lal (PW-7), Pratap Singh (PW-8), Constable Yashpal (PW-9) and Inspector Krishan Chand (PW-10) are police officials, who have proved the case of the prosecution.

As per the version of Shri Bhagat Ram (PW-1), prior to her marriage, deceased had stayed with him for 5-6 years and he had solemnized her marriage and borne all expenses for the same. According to him, accused persons, particularly, Sohan Lal started harassing the

deceased alleging that she was not working at the house. Prior to her death deceased had visited her paternal house and told her mother that accused persons were harassing her and not providing her clothes and meals. He met accused Kashmiri Lal and requested him not to beat Smt. Krishani Devi. He even requested Bansi Ram, President of Gram Panchayat, to intervene and ask the accused persons not to physically beat the deceased. Shri Bansi Lal, however, expressed her inability as the accused persons refused to even listen to him. On being informed that the deceased was having stomachache, on the asking of PW-4 he visited the house of the accused where he found the dead body of the deceased lying in the house. He got his statement (Ext.PW-1/A) recorded with the police. The police searched and recovered two tubes containing tablets of poison. In the cross-examination, he has clearly stated that deceased was having good health. He has denied the suggestion that deceased had handed over his entire jewellery to him for safe custody. He has further denied the suggestion that because he did not return the jewellery she committed suicide. He has denied the suggestion that deceased was hot tampered and used to beat her children.

As per the version of Bhagwan Dass (PW-2) accused Sohan Lal was not having good terms with the deceased from the beginning of their marriage and the deceased had told him that she was not getting proper clothes and meals from her husband and other family members. About 5-6 years prior to her death, she had told him that accused persons including Sohan Lal were not tolerating her. He visited the house of Sohan Lal and advised him to live peacefully keeping in view the interest of their children. Deceased and her husband Sohan Lal

lived peacefully for some time thereafter and later on she died due to poison. The said version goes unrebutted in the cross-examination. In cross-examination, however, he has denied that the accused was giving proper meals and clothes to the deceased or that whenever she visited her parents house she wore good clothes and jewellery.

Bansi Ram (PW-3) President of Gram Panchayat, Gatwar, at the relevant time, was declared hostile and cross-examined by the Public Prosecutor. In his cross-examination he has admitted that accused persons are from his village. He could not state whether the accused persons were not giving proper meals and clothes to the deceased. He was confronted with his statement Ext.PW-3/A, wherein it was so recorded that all the accused persons were quarrelling with the deceased and that on 12.4.1995 he had come to know through the coolies working in the house of the accused that the accused was harassing the deceased and were not providing good meals. This witness has admitted the fact that he was informed by the accused that the deceased had taken poison and that he had visited the house of accused Sohan Lal and lodged the report Mark 'X'. The police had reached the house of the accused and had recovered two tubes of phosphorous tables, which were taken into possession vide memo Ext.PW-3/C. The other articles were also taken into possession vide memos Ext.PW-3/D and Ext.PW-3/E. He has denied that Bhagat Ram had ever reported the matter to him that the accused persons were harassing deceased Smt. Krishani Devi.

This witness belongs to the village of the accused and has a reason to depose in this favour. Even he does not state with certainty that the accused were providing with proper food and clothes to the deceased.

He has specifically not denied that the accused were not giving proper meals and clothes to the deceased.

Smt. Servo Devi (PW-4) mother of deceased has deposed that during the life time of the father of accused Sohan Lal, the deceased was kept nicely but thereafter accused Sohan Lal started beating and harassing her daughter. Version of PW-1 stands corroborated by her that one or two months prior to her death deceased had visited her and told her that she was being harassed and beaten by the accused persons on the ground that accused was not working. The accused were not providing the deceased with proper clothes, meals and some times she was kept out of the house. She has further deposed that she had confronted Sohan Lal and asked him not to harass and beat her daughter. She had disclosed this fact to PW-1. On 14.4.1995 relative of accused had come to her house to inform her that deceased was having stomachache and had asked her to accompany him. She had sent for PW-1 to ascertain the factual position. In her cross-examination she has denied that deceased used to visit her in proper dress. She had denied the suggestion that accused were not providing the deceased with proper meals. She has explained that she was restrained by her daughter, therefore, she did not report the matter to the police. She has denied the suggestion that accused persons were not giving beatings or harassing the deceased.

As per the version of Jai Kishan (PW-5), brother of the deceased, on 13.4.1995 he had visited the house of the accused Sohan Lal. On seeing him all the accused persons, except Sohan Lal, left the spot and deceased while weeping told him that in the night, under the influence of liquor, Sohan Lal had given beatings to her and had also

broken her bangles. He has further categorically stated Sohan Lal used to occasionally beat his sister and that he had advised him to improve his behaviour. On 14.4.1995 he was informed by the police that his sister had died after having consumed poison. The deceased took poison due to harassment and beatings given by the accused persons. In the cross-examination he has denied the suggestion that during his visit to the house of the accused he had been informed by his sister that if her ornaments were not returned by PW-1 she would not allow her family members to celebrate Basakhi. He has explained that his sister prevented him from lodging any report against the accused.

From the deposition of PW-1, PW-2 and PW-3, it is evident that their testimony is clear, cogent, consistent and these witnesses are reliable and trustworthy. Their statement is cogent and natural. The version of PW-4 is duly corroborated by PW-1 and PW-5. From the depositions, it is clear that accused Sohan Lal used to harass and give beatings to the deceased. The deceased had narrated the incidents to PW-2, PW-4 and PW-5, who in turn had requested accused Sohan Lal to improve his behaviour and not to give beatings to the deceased. In spite of the same, accused did not improve his conduct and behaviour and continued to mal-treat her. The presence of the accused at the site of incident is not disputed, which is quite evident from the line of cross-examination of the prosecution witnesses. It is also admitted by the accused that PW-5 had visited the house of accused Sohan Lal and had met him and the deceased.

It is not the case of the accused that the said witnesses have deposed falsely due to any animosity or any ill-will which they were

harbouring against the accused persons. In fact the version of PW-4 that two months prior to her death, deceased had visited her house and narrated the incident of beatings given by the accused has not been questioned by the accused in the cross-examination.

Smt. Ajudhaya Devi (PW-6) is the neighbour of the accused Sohan Lal. Her house is at a distance of 200 ft. from the house of accused Sohan Lal. She has categorically stated that accused persons were frequently quarrelling with the deceased and during March, 1995 she had heard the cries of deceased during night hours. However, she could not specify as to who had beaten her as she did not visit the house of the accused on that day. She has further stated that during the night of 13.4.1995 she had seen the light in the house of the accused and heard voices. Her testimony goes unrebutted and this witness has not been cross-examined on this point. In cross-examination she has further clarified that during March, 1995 she had heard cries of the deceased during night as she was weeping.

This witness is the neighbour of the accused and there is no reason for her to have falsely deposed against the accused. It is not the case of the accused that she was harbouring any animosity against him. In fact her testimony goes unrebutted as she has not been cross-examined with respect to the incident of March, 1995 and 13.4.1995. Her statement is clear, cogent and reliable and there is nothing on record which would impeach her credibility and make her statement doubtful.

ASI Prem Lal (PW-7), HC Pratap Singh (PW-8), C. Yashpal (PW-9) are police officials who have proved the FSL report.

Inspector Krishan Chand (PW-10) has proved the recovery of the tubes (bottles) containing tablets Ext.P-3 and P-4, FIR Ext.PW-10/A, statement of PW-1 recorded under Section 154 Cr.P.C. (Ext.PW-1/A) and also the fact that he had completed the investigation. In his cross-examination he has clarified that with reference to the ornaments of the deceased he had also examined PW-1. In cross-examination he has deposed that he had interrogated Rakesh (DW-4), nephew of accused Sohan Lal, Kiran and Sandeep (daughter and son of accused Sohan Lal), Satya Devi wife of Rup Lal, with regard to death of the deceased. According to him, even though these persons had denied the fact that any quarrel took place in their presence, but however, he was informed that Sohan Lal used to abuse the deceased. During interrogation, Satya Devi had informed him that deceased had wanted to go to her mother's house alongwith PW-5, who had in fact told her that he was going to Shimla and would take her on his way back from there. During interrogation, he had opened two trunks lying in the room with keys Ext.P-1 and P-2 in which he found clothes belonging to the deceased to be in good condition.

From the statement of this witness, it is clear that tubes containing phosphorous were recovered from the house of the accused and Sohan Lal used to oftenly abuse the deceased.

The accused has examined four witnesses. Satya Devi (DW-1) wife of Rup Lal, brother of the accused, Kiran Devi (DW-2) daughter of deceased and accused Sohan Lal, Shyam Lal (DW-3) resident of village of the accused and Rakesh Kumar (DW-4) is the nephew of the accused.

Satya Devi (DW-1) was cited as a prosecution witness but was given up as having been won over by the accused persons which is so recorded in the proceeding dated 21.5.1999. She has stated that PW-5 had visited the house of the deceased and had informed him to convey the message to PW-1 to return her jewellery and in case he failed to do so she would not allow them to celebrate the festival of Basakhi. In cross-examination she has denied that Sohan Lal had given beatings to deceased on 13.4.1995 or that the deceased had informed PW-5 about the beatings given by Sohan Lal to the deceased. She has admitted that all the accused persons are related to her.

She is closely related to accused and is an interested witness. Her testimony, therefore, needs to be examined with circumspection, particularly, when she was won over by the accused persons. Her statement does not inspire much confidence as in her cross-examination, in a very casual manner, she has deposed that she did not know that the deceased had died a day after PW-5 had met her in the house of deceased. The deceased had expired on 14.4.1995 and she, being a family member, must have known about the death.

As per the version of DW-2 the accused never mal-treated her mother and her father used to give her money every month. Her mother was of serious nature and used to give beatings and before her death had given beatings to her brother Aju on 12.4.1995. In cross-examination she has clearly admitted that after the death of her mother she had never visited the house of her maternal uncle and has been residing with her father since then.

This witness was 12 years of age at the time of incident. She has been living with her father and is, therefore, obviously under his influence. Therefore, it is not expected of her to come out with true version and state complete and correct facts. Her statement is partly reproduced as under:-

> "The accused persons belonged to my family and they had never maltreated Krishani nor had deprived her of food and clothes. My father had been residing separately for the last about 8 years from his brothers and since then till her death my mother used to be paid by my father his income every month."

It is to be noticed that the case was registered against four family members. The offence is alleged to have taken place in a rural area where normally children are not conversant with the financial terms and dealings between the adult members of the family. This witness appears to have been tutored to save the other family members. From her statement, it is clear that with regard to maltreatment she has referred to the accused persons in general and specifically not stated anything with regard to her father. In natural course she would have specifically mentioned about her father not having mal-treated her mother. Further she has not stated anything with regard to her mother's ornaments, which as per the accused was the main cause of her having committed suicide. If ornaments was such a major and important issue with her mother she would have definitely come to know about the same and deposed accordingly, particularly when she has stated about the monthly payments

being given by her father to her mother. Therefore, her testimony cannot be believed and relied upon in favour of the accused.

Similarly depositions of DW-3 and DW-4 are of not much significance. DW-3 has stated that he was working as a mason in the house of the accused, but, however, he used to leave after 5 pm.

He could not state with certainty as to whether Sohan Lal used to maltreat his wife after 5 p.m.

DW-4 is an interested witness and the nephew of accused Sohan Lal. His testimony is to the effect that 3 days prior to the occurrence of the incident he had to stay with Sohan Lal who did not maltreat Krishani Devi in his presence. He has categorically stated that in his presence Sohan Lal did not maltreat Krishani Devi but his statement is not to the effect that during his stay he did not leave the house of Sohan Lal at all.

For the aforesaid reasons, it cannot be said that the witnesses examined by the accused are reliable and trustworthy or prove the innocence of the accused rendering the prosecution version to be false and incorrect.

Smt. Ajyodhya Devi (PW-6) has deposed that prior to the death of the deceased in the night she had seen the light in the house of the appellant throughout the night and also heard voices. The testimony of this witness goes unrebutted and is otherwise cogent, reliable and trustworthy. It is not the case of the appellant that the witnesses were deposing falsely as they were harbouring any animosity against him. Further PW-10 has categorically stated that he had inquired about the incident from Shri Sandeep son of the appellant. Just as the appellant

had examined his daughter, he could have also examined Sandeep to elicit the true and correct facts.

In *Gurbachan Singh Vs. Satpal Singh and others*, (1990) 1 Supreme Court Cases 445, the court has held as under:

> "4. Criminal charges must be brought home and proved beyond all reasonable doubt. While civil case may be proved by mere preponderance of evidence, in criminal cases the prosecution must prove the charge beyond reasonable doubt. See Mancini V. Director of Public Prosecutions, Woolmington V. Director of Public Prosecutions. It is true even today, as much as it was before. *There must not be any 'reasonable doubt' about the guilt of the accused in respect of the particular offence charged*. The courts must strictly be satisfied that no innocent person, innocent in the sense of not being guilty of the offence of which he is charged, is convicted, even at the risk of letting off some guilty persons. Even after the introduction of Section 498-A of the IPC and Section 113-A of the Indian Evidence Act, the proof must be beyond any shadow of reasonable doubt. *There is a higher standard of proof in criminal cases than in civil cases, but there is no absolute standard in either of the cases. See the observations of Lord Denning in Bater V. Bater but the doubt must be of a reasonable man. The standard adopted must be the standard adopted by a prudent man which, of course, may vary from case to case, circumstances to circumstances. Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escapes than punish an innocent. Letting guilty escape is not doing justice, according to law.*
>
> 5. *The conscience of the court can never be bound by any rule but that is coming itself dictates the consciousness and prudent exercise of the judgment. Reasonable doubt is simply that degree of doubt which would permit a reasonable and just man to come to*

a conclusion. Reasonableness of the doubt must be commensurate with the nature of the offence to be investigated.

30. It is the circumstantial evidence and the conduct of the accused persons which are to be taken into consideration for adjudicating upon the trustfulness or otherwise of the prosecution case."

(Emphasis supplied)

In *Pawan Kumar and others Vs. State of Haryana* (1998) 3 Supreme Court Cases 309, the court has held as under:

"11. It is true, as argued by learned counsel for the appellants, that in criminal jurisprudence benefit of doubt is extendable to the accused. *But that benefit of doubt would arise in the context of the application of penal law, and in the facts and circumstances of a case. The concept of benefit of doubt has an important role to play but within the confines of the stringency of laws*. Since the cause of death of a married woman was to occur not in normal circumstances but as a "dowry death", for which the evidence was not so easily available, as it is mostly confined within the four walls of a house, namely the husband's house, where all likely accused reside. Hence the aforesaid amendments brought in the concept of deemed "dowry death" by the husband or the relatives, as the case may be. This deeming clause has a role to play and cannot be taken lightly and ignored to shield an accused, otherwise the very purpose of the amendment will be lost. Of course, the prosecution has to prove the ultimate essential ingredients beyond all reasonable doubt after raising the initial presumption of "deemed dowry death"."

"18. …….In our considered opinion, cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty. In view of Explanation (a) the argument is, before it constitutes to be a cruelty there has to be wilful conduct. *Again willful conduct means, conduct willfully*

done; this may be inferred by direct or indirect evidence which could be construed to be such."

(Emphasis supplied)

It is now well settled that even evidence of hostile witness also to the extent it corroborates the prosecution version can be relied upon [Khujji v. state of M.P. and Sat Paul v. Delhi Admn.), (1976) 1 S.C.C. 727)].

In *Balram Prasad Agarwal vs. State of Bihar and others, (1997) 9 SCC 338,* it has been held as under:-

" Evidence further shows that the cruel conduct of the respondent-accused did not abate and appeared to have continued till the fateful night when the situation became unbearable for the deceased which resulted in her unfortunate death by drowning in the well in the courtyard of the house of the accused. It is necessary to appreciate that on that fateful night apart from the victim only the accused were in the house. *Thus what happened on that night and what led to the deceased's falling in the well would be wholly within the personal and special knowledge of the accused. But they kept mum on this aspect. It is of course true that burden is on the prosecution to prove the case beyond reasonable doubt. But once the prosecution is found to have shown that the accused were guilty of persistent conduct of cruelty qua the deceased spread over years as is well established* from the unshaken testimony of PW-6, father of the deceased girl, the facts which were in the personal knowledge of the accused who were present in the house on that fateful night could have been revealed by them to disprove the prosecution case. This burden under Section 106 of the Indian Evidence Act is not discharged by them. In this connection we may usefully refer to some of the decisions of this Court on the point. In the case of Shambhu Nath Mehra V. State of Ajmer Bose, J. speaking for a two-member Bench

referring to the applicability of Section 106 of the Evidence Act to criminal prosecutions laid down in paragraphs 10 and 11 of the report as under:

> "(10) Section 106 is an exception to Section 101. Section 101 lays down the general rule about the burden of proof.
> "Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."
> Illustration (a) says-----
>
> 'A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.
> A must prove that B has committed the crime"
> (11) This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are 'especially' within the knowledge of the accused and which he could prove without difficulty or inconvenience".
> In the case of Collector of Customs V. D.Bhoormall another Bench of two learned Judges of this Court while considering the offence under Sea Customs Act, 1878 earmarked the scope of Section 106 of the Evidence Act in the following terms in paragraphs 31 and 32 of the Report: (SCC pp. 553-54)

"31. The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and right of the evidence is to be considered---to use the words of Lord Mansfield in Blatoh V Archer Cowp at p.65 'according to the proof which it was in he power of one side to prove, and in the power of the other to have contradicted'. *Since it is exceedingly difficult, if not*

absolutely impossible for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

32. Smuggling is clandestine conveying of goods to avoid legal duties. Secrecy and stealth being its covering guards, it is impossible for the Preventive Department to unravel every ling of the process. Many facts relating to this illicit business remain in the special or peculiar knowledge of the person concerned in it. On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned and if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result prove him guilty. As pointed out by Best in Law of Evidence (12th Edn. Article 320, page 291), the 'presumption of innocence is, no doubt, presumption juris: but every day's practice shows that it may be successfully encountered by the presumption of guilt arising from the recent (unexplained) possession of stolen property', though the latter is only a presumption of fact. Thus the burden on the prosecution or the Department may be considerably lightened even by such presumption of fact arising in their favour. However, this does not mean that the special or peculiar knowledge of the person proceeded against will relieve the prosecution or the Department altogether of the burden of producing some evidence in respect of that fact in issue. It will only alleviate that burden to discharge which very slight evidence may suffice."

(Emphasis supplied)

The deceased a young lady of 36 years was a house wife and the incident has taken place in rural area. She has died in the house of the appellant. It is true that there is nothing on record to show that the appellant had given the poison or she had taken the same of her own. But

there is also nothing on record to show that the deceased had procured the poison (Ext.P-3 and Ext.P-4) of her own from the market. The same have been recovered from the house of the appellant and, therefore, it was incumbent upon him to have explained the circumstance as to how the same was found from there. Ext.P-3 and Ext.P-4 were found only after thorough search was done by the police. The appellant has not explained how and when the deceased procured and took the poison.

The deceased was having good health. There is enough evidence on record from which the guilt of the appellant can be inferred which otherwise has been clearly established. The evidence on record cumulatively proves the fact that the appellant has abetted in the commission of crime and the same was not a voluntarily act of the deceased. The established circumstance totally rule out any reasonable possibility of innocence of the appellant from any view point. The evidence clearly establishes, beyond shadow of reasonable doubt that due to the maltreatment by the appellant and the consistent cruelty perpetuated on the deceased, she committed suicide. The torture meted out by the appellant to her had become so unbearable that she forget the concern of her young children, otherwise in the normal course of human conduct a hail and hearty woman would not have taken such a drastic step to end her life.

The evidence in the facts and circumstances of the present case brings to an inaccessible conclusion that the harassment meted by the appellant a day before the actual death of the deceased cumulatively with the other evidence constitute to be an act of cruelty and harassment in connection

with the marriage. There is direct and reasonable connection between the act of the suicide and the cruelty meted out by the appellant to the deceased.

The conduct of the appellant has been painful and distressing towards his wife. The behaviour of the appellant in causing mental and physical torture to the deceased was abnormal spread over a considerable period of time.

There is nothing on record to show that the appellant had made any attempt to retrieve the Jewellery belonging to the deceased from PW-1. The defence of the appellant that the appellant committed suicide for the reason that PW-1 did not return her Jewellery is a concoction and not true. The appellant has led evidence. It is the case of the appellant a day before her death the deceased had informed PW-5 that if the Jewellery was not returned by the next day she would not allow her relatives to celebrate 'Baishaki'. The said fact is stated to have been disclosed in the presence of DW-1 who is a family member of the appellant. The presence of the appellant on 13th and 14th April, 1995 at the spot is not disputed by him. If the Jewellery was such a cause of deep concern and an important and material issue with the deceased, in normal circumstance any husband having cordial relations with his wife, out of concern and love for her would have taken step to retrieve the Jewellery from PW-1 or at least make some effort of bringing this fact to the notice of the other family members of the deceased. This, however, is not the case in hand. It is not the case of the appellant that the deceased was a quarrel some lady or had intimidated and threatened the appellant of taking off her life prior to the incident in question. It is not the case of the appellant that the deceased

was hypersensitive to ordinary discord and differences in domestic life. Assuming that the theory propounded by the appellant to be correct, in normal circumstances any husband would have taken precautionary measures to ensure the safety of his wife. No such measures, were taken by the appellant. It is not the case of the appellant that he was having strained relations with PW-1. It is also not his case that his wife had requested him to get the Jewellery back from PW-1 or that he had taken any steps to contact PW-1 at any point in time. It is not understandable as to why the deceased would only ask her brother and not ask her husband to get back her jewellery. The theory of innocence propounded by the appellant does not inspire confidence so as to raise a reasonable doubt of suspicion rendering the version of the prosecution to be false or doubtful. It is not the case of the appellant that the deceased had told him and asked him to do so at any point in time. As per the version of PW-1 he had not met the deceased for over a period of one year prior to her death. This fact goes unrebutted. It is not a case where the deceased had suddenly lost her ornaments and in the spur of a moment, of her own volition committed suicide.

It has been proved on record by consistent, cogent and reliable evidence that since the death of the father of the appellant, the deceased was harassed, maltreated, not looked after properly and physically beaten up by the deceased on various occasions and twice just before her death. The dispute between the appellant and the deceased was not the usual bickering of any matrimonial discord but the action of the appellant were such that he had caused lot of mental, agony, pain to the deceased and pushed her of taking such a drastic step of giving up her life

at the young age of 36 years little forgetting about the welfare of her minor children.

The appellant has been goading, provoking and inciting the deceased to take such drastic steps. He was un-mindful of the safety, security and life of the deceased. He created a circumstance that the deceased was left with no other option.

The circumstantial evidence as well as the evidence of the prosecution witnesses clearly prove beyond reasonable doubt that the appellant instigated and abetted the deceased in the commission of the charged offence. In the instant case, on a proper consideration and weighing of the evidences, the only reasonable view that can be taken is that the cruel behaviour and constant harassment caused by the appellant in his house instigated the deceased to commit suicide.

It is, therefore, proved through the statements of PW-1, PW-2, PW-4, PW-5 and PW-6 that the appellant Shri Sohan Lal used to mal-treat the deceased and give her beatings and had subjected her to cruelty abetting her to commit suicide.

From the statements of prosecutions witnesses, it is clear that acts of accused Sohan Lal pointing towards his guilt stands proved. Simply because co-accused have been acquitted, that by itself cannot be a ground for acquitting the appellant, particularly when there is sufficient material on record to show his complicity in the commission of the crime.

The Court below has correctly appreciated the material on record while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The appellant is on bail. His bail bonds are cancelled. He is directed to surrender before the Court

below to serve out the sentence and in failure to do so, the trial Court is directed to proceed in accordance with law.

December 27, 2007
(C/R)

(Sanjay Karol)
Judge